
OPINION OF THE PUBLIC ACCESS COUNSELOR

PARIS LEWBEL,
Complainant,

v.

INDIANAPOLIS DEPT' OF PUB. SAFETY COMMC'N,
Respondent.

Formal Complaint No.
18-FC-109

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging that the Indianapolis Department of Public Safety Communications (“PSC”) violated the Access to Public Records Act¹ (“APRA”). The PSC filed a response via director Paul Babcock. In accordance with Indiana Code § 5-14-5-

¹ Ind. Code §§ 5-14-3-1 to -10

10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 17, 2018.

BACKGROUND

Paris B. Lewbel (“Complainant”), a reporter with WRTV, filed a formal complaint alleging the Indianapolis Department of Public Safety Communications improperly denied his public records request seeking aggregate data for multiple agencies within the department’s Computer Aided Dispatch (“CAD”) system by referring him to file a public access request with each individual agency utilizing the system.

Around July 11, 2018, Lewbel filed a public records request with the agency seeking an excel spreadsheet query of all Tiburon CAD TS² calls from an 18 month period displaying:

1. Date
2. Time
3. CAD Number
4. Location
5. Unit Number that opened the run
6. If a police report was generated

According to Lewbel, this report is a simple query that CAD can generate on an Excel spreadsheet without significant re-programming or extraordinary technical expertise.

The request was not denied, *per se*. Lewbel received a message stating that the PSC stores CAD data for multiple

² Tiburon CAD is the dispatch center for a large number of first responder agencies in the county

agencies and each agency would need to authorize the release of the data and therefore the request should be made on each individual agency.

The PSC, in its response, states that the CAD system it maintains is merely a repository or hub for each agency's individual data. Thus, when a requester seeks individual data, the person should direct the public records request to the specific agency rather than to PSC.

PSC makes this distinction largely to distinguish itself from each individual agency in order to avoid having to exercise discretion or redact details based upon another agency's information. Law enforcement agencies, for example, have the discretion to withhold certain investigatory records. It would not stand to reason that PSC would exercise that discretion on behalf of the sheriff's office or municipal police department.

ANALYSIS

1. The Access to Public Records Act ("APRA")

The Access to Public Records Act ("APRA") states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The Indianapolis Department of Public Safety Communications is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the

right to inspect and copy the PSC's public records during regular business hours. Ind. Code § 5-14-3-3(a).

2. Public Records of the PSC

The PSC argues that it is merely the custodian of the requested records; they hold them on behalf of law enforcement and other public safety agencies as a data hub or repository but they are "owned" by each individual agency.

The APRA, however, does not speak in terms of ownership. The definition of public record is clear that creation or ultimate ownership is not the benchmark for what is or is not a public record. Under APRA, a public record is:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, *received, retained, maintained, or filed by or with a public agency* and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2(r)(emphasis added). The PSC appears to sell itself short in that it is simply a digital bucket for responding agencies to dump their information. It is much more than a warehouse. Recently, the PSC, via the Marion County Sheriff's Office, was gracious enough to invite this Office to tour its facility and speak with its administrators. In every way, it seems as if it is carrying out its statutory duty under Indiana Code Section 36-8-15-8 to:

provide and maintain modern, dependable, and efficient public safety communications systems

within the district for the purpose of promoting the expeditious delivery of public services to the residents and taxpayers throughout the district in order to assure the public health, safety, morals, and general welfare.

Dispatch data is not investigatory in nature. Nor is a dispatch center a law enforcement agency. It does not arrest, apprehend, investigate or prosecute.³ While it can be a springboard for those things, it is a public agency in and of itself. It exists for the sole purpose of storing, organizing, and aggregating data for the benefit of the public, mutually exclusive from any individual agency. Dispatch is a critical administrative undertaking but not a law enforcement activity.⁴

Moreover, the PSC does not argue that Lewbel's query is overly burdensome or would necessitate extraordinary efforts to effectuate. Indiana Code Section 5-14-3-3(d) states a public agency that maintains public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records. Reasonable efforts have often been interpreted to include simple search queries of a database or software program.

For data aggregation requests, a hub or repository is, by definition, *the* appropriate respondent for a public records inquiry insofar as the aggregation is something the hub can reasonably do. Seemingly, it is the *only* agency that can

³ Ind. Code § 5-14-3-2(p)(6)

⁴ Ind. Code § 5-14-3-2(j): law enforcement acting does not include administrative functions.

cross-reference data over multiple divisions and departments to compare and contrast the efficacy of those agencies.

This Office, time and again, has encountered situations where a “non-custodial” agency has deferred a request to the originating agency only for that agency to refer the requester back to the original one. It becomes a case of public records “keep-away” wherein the requester is caught in the middle continually chasing a moving target.

Therefore, it should be definitively stated that any public data hub or repository with the capability to run reports of aggregate non-sensitive data should do so without question.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor